BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, DC 20554

IN THE MATTER OF:

CC Docket No. 02-6

Request for Review

Introduction

Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission. Vance County School District (VCSD) specifically appeals the funding denial of Year 2009 FRN 1844525 in the amount of \$65,142.21. See Exhibit 1, Funding Commitment Decision Letter for Form 471 Application 624508.

Background

Whether a fundamental strength or weakness of the program, it has long been acknowledged that, particularly in the area of cellular telephone service, the distinction between a month-to-month and a contracted service is oft foggy. Applicants must cut through the jargon included in sales agreements, discounts, rebates, early termination notices, and ambiguous contracts in order to file E-rate applications. This haze of

^{1 47} C.F.R. § 54.719(c).

contractual confusion results in applicants regularly filing applications for discounts on cellular service under month-to-month when they actually have a contract, or filing contract end dates one year too early when they actually have a two year contract, among other issues.

Combine the normal level of cellular contract cloudiness with a clerical error on the part of an Alltel account representative, throw in a merger and acquisition, and VCSD is left stranded with no way to call for help.

VCSD submitted a timely appeal to the administrator December 7, 2009, which was denied because the SLD, of course, does not have the authority to waive program rules. Therefore, VCSD respectfully calls upon the Commission, its last lifeline, to review and overturn the funding denials and return the application to the SLD for processing. See Exhibit 2, Administrator's Decision on Appeal dated December 21, 2009.

Discussion

In the funding commitment decision letter dated November 24, 2009, the administrator's reason for denial states: "No contract was in place when the Form 471 certification was filed." This is not the case.

The fact that this funding request was based on a two year contract, and that clerical errors were made on the part of the vendor, was acknowledged and certified by the service provider during application review. See Exhibit 3, Vendor Acknowledgement Letter.

Alltel/Verizon Wireless faxed the original contract to meet application filing deadlines, the applicant subsequently missed the fact that the account representative had

failed to date the contract and had also, inadvertently, checked the wrong box indicating the length of the contract. However, the contract was absolutely intended to be a two-year contract, a fact that was communicated in writing by both the applicant and the service provider during review. In fact an equipment rebate was discussed prior to the signing of the contract that required a two-year commitment on the part of the applicant.

The two year contract was transactionally acknowledged by the service provider whom promptly processed rebate checks for the equipment purchased in an amount reflective of and requiring a two year agreement. The fact that the service provider proposed and subsequently processed the rebate was yet another indication to the district that a two year agreement was in place and was indeed, as defined by Adams County, FCC 07-35, Rel. March 28, 2007, proof that they had a binding, legal arrangement with the service provider. See Exhibit 4, Rebate Documentation (Note: Bullet Point #2: "2-year contract required for valid rebate.")

At the time VCSD filed the FY2009 funding request referencing Form 470 643500000654244, the district was honoring its contract and doing its best to comply with all program and procurement rules. While VCSD acknowledges the fact that a ministerial error occurred, they adamantly uphold that despite the error, a fair and open competitive bidding process took place. VCSD firmly believes they represented themselves in a manner compliant with the spirit of the E-rate program in this matter.

Conclusion

VCSD sincerely hopes that the FCC agrees that a valid two-year contract was indeed in place, as represented and acknowledged by the vendor, and respectfully asks the Commission to overturn, based on Bishop Perry and Adams County, the reviewer's

denial of this FRN in order to clear the way for the SLD to process this funding request. Should this request be denied, VCSD will be forced to pay full retail costs of approximately \$74,025.24. This amount, if not discounted at the VCS rate of 88 percent, represents a significant burden on already taxed local funds. VCSD implores the FCC to approve this appeal as soon as possible or within 90 days as required under regulation.

Submitted,

Marsha Abbott

Director for Technology

Vance County School District

PO Box 7001

1724 Graham Avenue

Henderson, North Carolina 27536

(252) 492- 2127 Telephone

(252) 430- 3690 Facsimile

mabbott@vcs.k12.nc.us



Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER (Funding Year 2009: 07/01/2009 - 06/30/2010)

November 24, 2009

Marsha Abbott VANCE COUNTY SCHOOL DISTRICT 1724 GRAHAM AVENUE, PO BOX 7001 HENDERSON, NC 27536-7001

Re: Form 471 Application Number: 647317 Billed Entity Number (BEN): 126857 Billed Entity FCC RN: 0011847860 Applicant's Form Identifier: yr1202 cell

Thank you for your Funding Year 2009 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$65,142.21 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements

- Review CIPA requirements

- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

- Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
- State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:

- Appellant name,

- Applicant name and service provider name, if different from appellant,

- Applicant BEN and Service Provider Identification Number (SPIN),
- Form 471 Application Number 647317 as assigned by USAC,
- "Funding Commitment Decision Letter for Funding Year 2009," AND

- The exact text or the decision that you are appealing.

- 3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
- 4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
- Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal Schools and Libraries Division - Correspondence Unit 100 S. Jefferson Road P.O. Box 902 Whippany, NJ 07981

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information. information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

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Schools and Libraries Division Universal Service Administrative Company

Billed Entity Name: VANCE COUNTY SCHOOL DISTRICT BEN: 126857 Funding Year: 2009

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 647317
Funding Request Number: 1844525
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 643500000654244
SPIN: 14300677
Service Provider Name: Verizon Wireless
Contract Number: N/A
Billing Account Number: 252-492-2127
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 01/29/2008
Contract Expiration Date: 06/30/2010
Shared Worksheet Number: 1094401
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$74,025.24
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$74,025.24
Discount Percentage Approved by the USAC: 88%
Funding Commitment Decision: \$0.00 - Contract Violation
Funding Commitment Decision Explanation: MR1: In consultation with Alltel, the service provider has been changed to Verizon Wireless SPIN number 143000677.

SCONT Pate: 11/24/2009

FCDL Date: 11/24/2009
Wave Number: 029
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2010



Universal Service Administrative Company

Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2009-2010

December 21, 2009

Marsha Abbott Vance County Schools 1724 Graham Avenue P.O. Box 7001 Henderson, NC 27536-7001

Re: Applicant Name:

VANCE COUNTY SCHOOL DISTRICT

Billed Entity Number:

126857

Form 471 Application Number:

647317 1844525

Funding Request Number(s): Your Correspondence Dated:

December 14, 2009

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2009 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s):

1844525

Decision on Appeal:

Denied

Explanation:

• During Initial Review, via the Selective Review Information Request (SRIR), Vance County School District was asked to provide signed and dated copies of any and all agreements related to each of the Form 471 funding request(s), including any and all contracts, agreements, Statements of Work, etc. In response, the applicant provided a copy of the contract with Alltel (now Verizon Wireless) that was not dated. However, the contract stated that the term was for one (1) year. Additionally, the District was given the opportunity to certify that the Contract Award Date is January 29, 2008, which the District validated as being correct on October 21, 2009. The District also stated that the contract was for a two (2) year term and provided documentation dated June 2008 and later to support this statement. However, this documentation does not prove that the

contract was awarded on January 29, 2008 for a two (2) year term. Therefore, the contract expired before Funding Year 2009 had started. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed (certified) Services Ordered and Certification Form (Form 471). Applicants must be able to demonstrate that it had a signed contract in place at the time it submitted the completed Form 471.

USAC has determined, that at the time you submitted your FCC Form 471
application, you did not have a contract with your service provider(s), which
meets your state and local or the FCC's definition of a contract. Additionally, the
services you requested are not tariff or month-to-month services. Except for
services to be delivered under non-contracted tariff or month-to-month
arrangements, FCC rules require that applicants submit a completed FCC Form
471 "upon signing a contract for eligible services." See 47 C.F.R. sec. 54.504(c).
In your appeal, you did not demonstrate that USAC's decision was incorrect. As
USAC does not have authority to waive the FCC rules of the program, your
appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division Universal Service Administrative Company Marsha Abbott Vance County Schools 1724 Graham Avenue P.O. Box 7001 Henderson, NC 27536-7001

Billed Entity Number:

126857

Form 471 Application Number: 647317

Form 486 Application Number:

Exhibit 3, Vendor Acknowledgement Letter



Verizon Wireless 5520 Capital Center Drive Raleigh, NC 27608

10\21\09

To whom it may concern:

Vance County Schools signed a two year contract with Alltel on 1/29/2008 that covers services from 7/1/08 to 6/30/10. The original contract was signed by the Alltel Director of Business Sales and Marsha Abbott, Vance County Schools Director of Technology. Alltel was purchased by Verizon in January of 2009.

Sincercly

Atten Jenkins

Business Sales Manager

Central and Eastern NC

Great Rebates from Alltel



RIM BlackBerry 8830 — \$100 Mail-in Rebate

Offer good August 30, 2007 through July 3, 2008

To receive your Allfel rebate:

- 1. Complete tebate -- -- -- -- -- -phene number asset to 12.7 _ 1 as an service agreement."
- 2. Cut out and submit the outlier, and all purchase label from the state of the state of box Sample strown

No photocopies will be accepted.



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Mail all documents to:

Alltel Rebate Offer Dept. 07-76084 P.O. Box 540046

El Paso, TX 88554-0044

Ensure your rebate submission includes the following:

- Completed rebate to the completed rebate to the completed rebate to the complete of the
- ☑ Proof of purchase train disease beax
- ☐ Purchase receipt = packing slip.
- Copy of recent Allter Wireless bill.

Personal Account Information, PLASE PRINT CLEARLY

VANCE COUNTY Submanifer Ford Name (Required)

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1724 GRAHAM AVE Ida-To Access (Requires)

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HENDERSON NC 27536

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CONTRACTOR CO.

You will be notified by e-mail the status of your rebate submission.

- · Rebate submissions must be postmarked within 60 days of purchase.
- 2-year contract required for valid rebate.
- Handset cannot be returned once mail-in rebate. certificate has been submitted.
- · A separate rebate form must be completed and mailed in a separate envelope for each handset purchase.
- Please allow 10-12 weeks for processing.

Terms & Conditions, Mail in return from must be posteriored no later than 60 days from the date of purchase. This offer is good only with the purchase of a RIM BlackBerry. 8830 through wireless provide if 12-37 minus pt.7.0343. The so cless provide reserves the right to review and approve all submissions and modify or withdraw this promotion at any time for any 17 Month 1, that the FMM Black Being SISSInstitute offer per westers prioric number. All relations are good or new activations and contract renewals with a two-year contract. Each instrument for up to \$200 and a mandatory and trateon provided however for each priorie many apply. Frequires credit approval. Customers must have active wreless service and G. 1911 at fourth the directive processing. Materials received because process of the wireless prouder and cannot be returned Reproduction, purchase, sale in this in White retails soft leaf further proof of our class is prohibited. This other supersedes and cannot be combined with any other offer Cannot be combined with other priority of the retain form has no cash value. FIM BlackBerry 8530 retuite will be mailed via the U.S. Postal Service 10-12 weeks after receipt of the claim. Rebate shocks will be induced in J.S. dollars only. Rebate sheeks not cashed within 50 days of as large are vaid and will not be reissued. Rebate may not be valid in all markets and junishabitions. Lifter valued only in the United States. Certain restrictions apply. Any maken relate certificate lost or misdirected by the U.S. Postal Service or other delivery Amsterday in the responsibility of the winness provides or as Furtiliment Center. If apple or incomplete rebate certificate forms will be considered invalid or ineligible to relate (insulation) solar sound result in prosecution under this. Main Fraud Statute (15 USC Section 1341-1342). Subject to terms of Customer Agreement and Calling Plan. Residue may not be available for purchases from certain localices or channels

Check your rebate status at: alltelrebatecenter.com or call 1-800-460-0942.

Great Rebates from Alltel

MOTORAZR — \$50 Mail-in Rebate

Offer good January 11, 2008 through July 3, 2008



To receive your Alltel rebate:

- Complete rebate form. (Provide wireless) phone number associated with 24-month service agreement.)
- 2. Cut out and submit the entire proof of purchase label from the side of the device box. Sample shown below.

No photocopies will be accepted.



- 3. Provide a copy of your purchase receipt or packing slip.
- 4. Provide a copy of the first page of your most recent wireless service bill.
- 5. Make copies of all these documents for your records. Any disputed claim will require photocopies for resolution.

Mail all documents to:

Alltel Rebate Offer - Dept.08-99480 P.O. Box 540046

El Paso, TX 88554-0046

Ensure your rebate submission includes the following:

- Completed rebate form
- Proof of purchase from device box
- Purchase receipt or packing slip
- Copy of recent Alltel Wireless bill

Personal Account Information, PLEASE PRINT CLEARLY.

VANCE COUNTY Subscriber First Name (Required)

5.41

SCHOOLS

Subscriber Last Name (Required)

GRAHAM Mail-To Address (Required)

Apt/Unit #

HENDERSON City (Required)

State (Reg)

Zip Code (Required)

Wireless Phone Number (with areacode) associated with 24-month service agreement at time of purchase. (Required) Date of Purchase (Required)

E-mail Address

E-mail Address Cont.

You will be notified by e-mail the status of your rebate submission.

- Rebate submissions must be postmarked within 60 days of purchase.
- 2-year contract required for valid rebate.
- Handset cannot be returned once mail-in rebate certificate has been submitted.
- · A separate rebate form must be completed and mailed in a separate envelope for each handset purchase.
- Please allow 10-12 weeks for processing.

Terms & Conditions: Mail-in rebate form must be postmarked no later than 60 days from the date of purchase. This offer is good only with the purchase of a MOTORAZR through wireless provider 1/11/08 through 7/03/08. The wireless provider reserves the right to review and approve all submissions and modify or withdraw this promotion at any time for any reason. Limit one MOTORAZR rebate offer per wireless phone number. All rebates are good on new activations and contract renewals with a two-year contract. Early termination fee up to \$200 and a mandatory arbitration provision for each phone may apply. Requires credit approval. Customers must have active wireless service and current account standing at the time of rebate processing. Materials received become property of the wireless provider and cannot be returned. Reproduction, purchase, sale or trade of this rebate certificate form or proof of purchase is prohibited. This offer supersedes and cannot be combined with any other offer. Cannot be combined with other phone offers. The rebate form has no cash value, MOTORAZR rebate will be mailed via the U.S. Postal Service 10-12 weeks after receipt of the claim. Rebate checks will be issued in U.S. dollars only. Rebate checks not cashed within 90 days of issuance are void and will not be reissued. Rebate may not be valid in all markets and jurisdictions. Offer valued only in the United States. Certain restrictions apply. Any mail-in rebate certificate lost or misdirected by the U.S. Postal Service or other delivery service is not the responsibility of the wireless provider, or its Fulfillment Center. Illegible or incomplete rebate certificate forms will be considered invalid or ineligible for rebate. Fraudulent submissions could result in prosecution under U.S. Mail Fraud Statute (18 USC Section 1341-1342). Subject to terms of Customer Agreement and Calling Plan. Rebate may not be available for purchases from certain locations or channels

Check your rebate status at: alltelrebatecenter.com or call 1-800-460-0942.





VANCE CO SCHOOLS 1724 GRAHAM AVENUE MARSHA ABBOTT HENDERSON NC 27536

Order Date: 2008-06-13 Order Number: 24007524 Container/Tag C13070911. -

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PAYABLE THRU FIRST NATIONAL BANK OF OMAHA **OMAHA NE 68102** FIRST NATIONAL BANK & TRUST CO COLUMBUS NE 68601 Acct # 09105139 76-1411/1049

07636310

DATE: 09/24/2008

VOID 90 DAYS AFTER ISSUE DATE

\$50.00

Not Valid for more than \$50,00

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K. Franklin - Transportation

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P.O. BOX 469 COPPELL, TX 75019

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76-1411/1049 DATE: 09/24/2008

VOID 90 DAYS AFTER ISSUE DATE

\$100.00

Not Valid for more than \$100.00

290520257/000505 VANCE COUNTY SCHOOLS 1724 GRAHAM AVE HENDERSON, NC 27536-2904 TO THE ORDER

One Hundred Dollars and 00/100

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Authorized Signature

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Fifty Dollars and 00/100

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> DATE: 09/24/2008

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VOID 90 DAYS AFTER ISSUE DATE

\$50.00

Not Valid for more than \$50.00

Authwrized Signature

290521248/000506 VANCE COUNTY SCHOOLS 1724 GRAHAM AVE HENDERSON, NC 27536-2904

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